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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN JOSE DIVISION**

9 JEFFREY SCHULKEN AND JENIFER )  
10 SCHULKEN, individuals, on their own )  
11 behalves and on behalf of all others similarly )  
12 situated, )

Plaintiff, )

13 v. )

14 WASHINGTON MUTUAL BANK, )  
15 HENDERSON, NEVADA; JPMORGAN )  
16 CHASE BANK, N.A., )

Defendants. )

No. C-09-02708-LHK

**PLAINTIFFS' THIRD AMENDED  
CLASS ACTION COMPLAINT  
AND JURY DEMAND**

Judge: Hon. Lucy H. Koh

17 Jeffrey and Jenifer Schulken (the "Schulkens" or "Plaintiffs"), for their Third Amended  
18 Complaint, allege as follows upon information and belief, based upon, *inter alia*, investigation  
19 conducted by their attorneys, except as to those allegations pertaining to Plaintiffs and their  
20 counsel personally, which are alleged upon personal knowledge:

21 **Introduction**

22 1. This case is about Defendants' use of false pretenses to illegally suspend and  
23 reduce credit limits on home equity lines of credit ("HELOCs") across the country. JPMorgan  
24 Chase Bank, N.A. ("Chase"), and its recently acquired division, Washington Mutual Bank  
25 ("WAMU") (collectively "Defendants"), in an attempt to limit their exposure to the risk of  
26 collapse in the United States housing market, have violated Regulation Z and the Truth-in-  
27 Lending Act and have broken contractual promises to their HELOC account holders (collectively  
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the “Class Members”) by claiming that their customers’ financial circumstances had materially changed (when they in fact had not) such that the customers would not be able to meet their loan obligations (when they in fact would). Rather than verifying first whether a customer’s financial circumstances had materially changed for the worse, Defendants reduced credit limits and froze accounts at the outset, leaving the customer with the option of appealing but without access to the credit for which he or she had bargained. As a result of the Defendants’ “shoot first, ask questions later approach,” the Defendants have collectively denied their customers access to hundreds of millions of dollars of credit at a critical time.

2. Each member of the Class had a HELOC for which Chase or WAMU reduced the available credit in a manner that was both illegal and unfair. As a result of Defendants' wrongful actions, Plaintiffs bring this class action on behalf of themselves and the putative class for actual and statutory damages and attorneys' fees under Regulation Z of the Truth-in-Lending Act ("TILA") (15 U.S.C. § 1640(a); 12 C.F.R. § 226.5(b)), equitable and injunctive remedies under California's Unfair Competition Law ("UCL") (Cal. Bus. & Prof. Code § 17200 *et. seq.*) and damages for breach of contract.

### Nature of the Claim

3. As recently as March 2009, Defendants sent a form letter to thousands of their HELOC customers, including Plaintiffs and the other class members, demanding verification of income. The letter stated:

We need your help updating your financial information related to your Home Equity Line of Credit (HELOC). Your account documents allow us to request updated information from you.

Complying with our request is easy:

- Complete and sign the enclosed Internal Revenue Service (IRS) Form 4506-T where indicated for each Borrower shown above. Instructions for completing the form are on the following page. This form allows us to obtain a summary of a specified federal tax return from the IRS.
- Provide a copy of a recent paystub for each Borrower and any additional current income documentation you would like to provide. Please indicate if you are self employed.
- Return each completed and signed 4506-T and other documents within 14 days of the date of this letter. You can fax the documents to 1-866-272-

9223 or mail them to: Washington Mutual Bank, a division of JPMorgan Chase Bank, N.A., Account Management MBO402FL, P.O. Box 3990, Melbourne, FL 32902-3990.

It is important that you provide this information. Thank you for your cooperation....

(See "March 13, 2009 Income Verification Request," a true and accurate copy of which is attached as Exhibit A.)

4. Plaintiffs submitted the necessary information shortly thereafter. On March 19, 2009, just six days after the date of the Defendants' initial letter, Plaintiffs learned that Defendants had frozen their HELOC while checking their account online. Plaintiffs then received a letter in an envelope post-marked March 19, 2009. Inside was a letter dated March 18, 2009, notifying Plaintiffs that their line was being suspended for their failure to submit all the paperwork specified in the letter of March 13, 2009. (See "Suspension Letter of March 18, 2009," a true and accurate copy of which is attached as Exhibit B.) During repeated telephone calls to Defendants' customer service personnel, Chase and WAMU subsequently explained that they had not received the necessary documentation, despite the fact their Income Verification Request had requested the documents be provided within 14 days. Ultimately, Plaintiffs received a form notice advising them that their HELOC account would remain suspended due to their financial circumstances and purported inability to support the loan amount.

5. Chase and WAMU lacked a sound factual basis for sending these letters and reducing or freezing their customers' HELOC limits. Defendants knowingly and intentionally falsely claimed that their customers' financial circumstances had changed so as to "trigger" Chase and WAMU's right to freeze or lower the credit limits. As a result, Defendants, in violation of federal law, reduced the credit limits and/or froze the HELOC accounts of many homeowners, including Plaintiffs, whose financial circumstances had not materially worsened so as give Defendants a reasonable basis for concluding the Plaintiffs and other accountholders would be unable to meet the terms of their loans.

6. Although federal law allows the creditor to freeze or reduce the line where the creditor reasonably believes that the consumer will be unable to make payments as agreed because

1 of a material change in the consumer's financial circumstances, this exception requires both a  
2 material change in a borrower's financial situation and the creditor's reasonable belief that the  
3 borrower will not be able to repay the HELOC account as agreed. With respect to Plaintiff and the  
4 Class, Defendants froze accounts and reduced credit limits where no material changes in the  
5 borrowers' financial situations had occurred and the Defendants did not have a reasonable belief  
6 that the borrowers would be unable to repay their HELOC accounts as agreed. As a result,  
7 Defendants' intentional systematic, freezing and mass reduction on the limits on their customers'  
8 HELOCs, as well as their use of standards that are inconsistent with Regulation Z, was and  
9 remains illegal.

10 7. Defendants' HELOC reductions are not only illegal; they are patently  
11 unconscionable. On October 3, 2008, Congress passed the Emergency Economic Stabilization  
12 Act of 2008, Pub. L. No. 110-343. As part of this law, Chase obtained, on information and belief,  
13 approximately \$25 billion from an unprecedented \$700 billion bailout funded entirely by  
14 American taxpayers. The rationale advanced for the bailout by its proponents was that the banks  
15 needed the money to ensure liquidity in the face of the worsening subprime mortgage disaster.

16 8. Despite Chase's statements to Congress to the contrary, Defendants have  
17 intentionally failed to meet their obligations to their customers and have intentionally deprived  
18 those customers of crucial affordable consumer credit at a critical time.

19 9. In stark contrast, Defendants' HELOC borrowers such as Plaintiffs, like most  
20 American consumers, are struggling in a faltering economy, yet they continue to meet their  
21 mortgage obligations. These customers have incurred appraisal fees, an increased price of credit  
22 and reduced credit scores, lost interest and other damages.

### 23 **Parties**

24 10. **Plaintiffs Jeffrey and Jenifer Schulken:** Plaintiffs maintain their primary  
25 residence in Cupertino, CA (the "subject matter property"). In or around October 2005, Plaintiffs  
26 obtained a HELOC in the amount of \$250,000 secured by the subject matter property.

27 11. **Defendant Washington Mutual Bank, Henderson, Nevada:** WAMU is a  
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national banking association with its main office located at 2273 North Green Valley Parkway Henderson, Nevada, 89014. On September 25, 2008, the United States Office of Thrift Supervision (OTS) seized WAMU from its holding company, Washington Mutual, Inc., and placed WAMU into the receivership of the Federal Deposit Insurance Corporation (“FDIC”). The FDIC sold the banking subsidiaries, minus unsecured debt or equity claims, to Chase for \$1.9 billion. Chase specifically assumed “all mortgage servicing rights and obligations of” WAMU, including WAMU’s HELOC accounts. WAMU is now operated as a subsidiary and/or division of co-Defendant Chase.

12. **Defendant JPMorgan Chase Bank, N.A.:** Chase is a national banking association with its main office located at 1111 Polaris Parkway Columbus, OH 43240. Under the Purchase and Assumption Agreement, Chase specifically assumed “all mortgage servicing rights and obligations of” WAMU, including WAMU’s HELOC accounts. Chase operates and/or controls WAMU as a subsidiary and/or division.

## Jurisdiction and Venue

13. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332(d)(2). This Complaint alleges claims on behalf of a national class of homeowners who are minimally diverse from Defendants. On information and belief, the aggregate of these claims exceeds the sum or value of \$5,000,000. This Court further has federal question subject matter jurisdiction under 28 U.S.C. § 1331 as this action arises in part under Regulation Z of the Truth in Lending Act, 15 U.S.C. § 1647, 12 C.F.R. § 226.5(b). This Court has supplemental subject matter jurisdiction over the pendent state law claims under 28 U.S.C. § 1367.

14. a. Defendant WAMU is a national banking association whose main offices are in Nevada, and is considered a citizen of Nevada for the purposes of diversity jurisdiction under 28 U.S.C. § 1348 and *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303 (2006).

b. Defendant Chase is a national banking association whose main offices are in Ohio, and is considered a citizen of Ohio for the purposes of diversity jurisdiction under 28 U.S.C. § 1348 and *Wachovia Bank*, 546 U.S. 303.

1           15.     Venue is also proper before this Court under 28 U.S.C. § 1391(b)(2) as a  
2 substantial part of the events, circumstances, and omissions giving rise to these claims occurred in  
3 this District.

4           16.     This Court has personal jurisdiction over Defendants under Cal. Code Civ. Proc. §  
5 410.10 because some of the acts alleged herein were committed in California (specifically in Santa  
6 Clara County, California), and because Defendants are registered to do business in this state and  
7 actively conduct business in this District.

8                           **Allegations as to Plaintiffs' Individual Claims**

9           17.     In October 2005, Plaintiffs obtained a HELOC secured by the subject matter  
10 property in the amount of \$250,000. According to Chase's own website, HELOC customers can  
11 utilize HELOC funds for a variety of needs, including, for example, home improvements,  
12 consolidating credit card debt, and paying college tuition. *See CHASE, HOME EQUITY LINE OF*  
13 *CREDIT*, [https://www.chase.com/index.jsp?pg\\_name=ccpmapp/home\\_equity/products/page/](https://www.chase.com/index.jsp?pg_name=ccpmapp/home_equity/products/page/line_of_credit)  
14 [line\\_of\\_credit](https://www.chase.com/index.jsp?pg_name=ccpmapp/home_equity/products/page/line_of_credit) (last visited Mar. 16, 2010). Plaintiffs' HELOC was for personal, family and  
15 household purposes. Plaintiffs obtained the HELOC for the primary purpose of paying down  
16 personal debt obligations relating to personal, family and household purchases. Among other  
17 personal and household uses, Plaintiffs used the HELOC funds to pay down personal debt incurred  
18 on the purchase of a motorcycle for personal use, the purchase of a van for family use, the  
19 renovation of their master bedroom in their home, the purchase and installation of carpet and  
20 flooring throughout their house, and the purchase of home appliances, including a washer and  
21 dryer.

22           18.     On March 13, 2009 Plaintiffs received an Income Verification Request letter from  
23 Defendants seeking certain financial information within 14 days. (See Ex. A.)

24           19.     Plaintiffs complied with the Income Verification Request and submitted financial  
25 information over the next several days via facsimile.

26           20.     On March 19, 2009, Plaintiffs discovered, while checking their account via the  
27 Defendants' website, that their HELOC had been suspended. The next day, Plaintiffs received a  
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1 letter apparently mailed March 19, 2009 and dated March 18, 2009 that notified the Plaintiffs that  
2 their line was being suspended for their failure to submit all the paperwork specified in the letter  
3 of March 13, 2009. (See Ex B.)

4 21. Prior to the HELOC suspension but before notice, Plaintiffs had issued a check to  
5 pay their credit card. This check was dishonored and the Plaintiffs incurred finance charges as a  
6 result.

7 22. Following the suspension, Plaintiffs repeatedly contacted customer service and  
8 were provided confusing and often conflicting reasons for how Defendants had determined the  
9 Plaintiffs' income justified the suspension. Plaintiffs were also given inconsistent information  
10 with respect to the papers needed by the Defendants to review the account for potential  
11 reinstatement. Plaintiffs ultimately sent via facsimile over 75 pages worth of financial  
12 documentation to Defendants, including the requested documents other than paystubs because the  
13 Schulzens are self-employed. Defendants steadfastly refused to remove the suspension.

14 23. At no time did Plaintiffs' income materially change or decrease, and at no time did  
15 the Defendants' have a reasonable basis for concluding Plaintiffs, who had always made timely  
16 payments on all their loans, would not be able to meet the terms of their loan agreement. Despite  
17 repeated requests, Defendants have refused to remove the suspension.

18 24. Plaintiffs' HELOC with Defendants was their primary line of credit. Defendants'  
19 reduction of the credit limits on the Schulzens' HELOC dramatically increased the ratio of credit  
20 the Schulzens used to the amount of credit he had available. In turn, on information and belief,  
21 Defendants' acts drove up the Schulzens' Credit Utilization Rate ("CUR"), a major component of  
22 their credit rating. In addition to depriving the Schulzens of the availability of their HELOC,  
23 Defendants' acts damaged their credit rating and increased the cost of credit to them.

#### 24 **Class Certification Allegations**

25 25. Plaintiffs seek certification of a class and one subclass under both Fed. R. Civ. P.  
26 23(b)(2) and Rule 23(b)(3).

27 26. **Definition of the Class:** Pursuant to Fed. R. Civ. P. 23, Plaintiffs bring this  
28

1 Complaint against Defendants on behalf of the “Class,” consisting of:

2 All WAMU and Chase HELOC borrowers in the United States who had their  
3 respective HELOCs reduced or suspended due to WAMU’s or Chase’s conclusion  
4 that the borrower would be unable to fulfill their payment obligations due to a  
5 purported material adverse change in financial circumstances.

6 Excluded from the Class are 1) any Judge or Magistrate presiding over this action and members of  
7 their families; 2) Defendants, Defendants’ subsidiaries, parent companies, successors,  
8 predecessors, and any entity in which Defendants or their parent companies have a controlling  
9 interest and their current or former employees, officers and directors; 3) persons who properly  
10 execute and file a timely request for exclusion from the class; and 4) the legal representatives,  
11 successors or assigns of any such excluded persons.

12 Plaintiffs anticipate that amending the Class definition may become necessary following  
13 discovery.

14 27. **Numerosity:** The exact number of the members of the Class is unknown and is not  
15 available to the Schulken, but it is clear that individual joinder is impracticable. Defendants sent  
16 their generic letters to thousands of mortgagors, and a substantial percentage of the recipients of  
17 these letters fall into the definition of the Class. Class members can be easily identified through  
18 Defendants’ records and public records.

19 28. **Commonality:** Common questions of fact and law exist as to all members of the  
20 Class and predominate over the questions affecting only individual members. These common  
21 questions include:

- 22 (a) What were Defendants’ criteria for reducing or suspending the credit limits on their  
23 HELOCs;
- 24 (b) Whether Defendants reduced or suspended HELOC accounts based  
25 on purported material changes in income without a reasonable basis for concluding  
26 such a material change had in fact occurred;
- 27 (c) Whether Defendants’ criteria for reducing HELOC credit limits and/or suspending  
28 HELOC accounts based on phantom material changes in accountholder finances  
violated Regulation Z;



- 1 (d) Whether Defendants' reduction of the credit limits or account suspensions for  
2 purported material changes in income breached the terms of its HELOC  
3 agreements;
- 4 (e) Whether Defendants' HELOC agreement terms imposed contractual obligations on  
5 Defendants to comply with Regulation Z;
- 6 (f) Whether Defendants' reduction or suspension of the credit limits on their HELOC  
7 agreements was unfair and unlawful;
- 8 (g) Whether in those cases where a material change in financial circumstances had in  
9 fact occurred, Defendants had a reasonable basis for concluding the material  
10 changes would render such customers unable to meet the terms of their HELOC  
11 agreements.
- 12 (h) Whether Defendants' contracts and policies improperly purport to allow them to  
13 reduce credit limits or freeze HELOC accounts due to immaterial declines in  
14 property values or otherwise use triggering events inconsistent with federal law;
- 15 (i) Whether the Schulken and the Class members are entitled to relief, and the nature  
16 of such relief.

17 29. **Typicality:** The Schulken's claims are typical of the claims of other members of  
18 the Class as the Schulken and other members sustained damages arising out of the wrongful  
19 conduct of Defendants, based upon the same transactions which were made uniformly to the  
20 Schulken and the public. The California and federal laws under which the Schulken's claims  
21 arise do not conflict with the laws of any other state in any material way.

22 30. **Adequate Representation:** Plaintiffs will fairly and adequately represent and  
23 protect the interests of the members of the Class, and have retained counsel competent and  
24 experienced in complex class actions. Plaintiffs have no interest antagonistic to those of the Class  
25 or the Subclasses and Defendants have no defenses unique to Plaintiffs.

26 31. **Predominance and Superiority:** This class action is appropriate for certification  
27 because class proceedings are superior to all other available methods for the fair and efficient  
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1 adjudication of this controversy, since joinder of all members is impracticable. The damages  
2 suffered by the individual members of the Class will likely be relatively small, especially given  
3 the burden and expense of individual prosecution of the complex litigation necessitated by the  
4 actions of Defendants. It would be virtually impossible for the individual members of the Class to  
5 obtain effective relief from the misconduct of Defendants. Even if members of the Class  
6 themselves could sustain such individual litigation, it would still not be preferable to a class  
7 action, because individual litigation would increase the delay and expense to all parties due to the  
8 complex legal and factual controversies presented in this Complaint. By contrast, a class action  
9 presents far fewer management difficulties and provides the benefits of single adjudication,  
10 economy of scale, and comprehensive supervision by a single Court. Economies of time, effort,  
11 and expense will be fostered and uniformity of decisions will be ensured.

12       32.     **Policies Generally Applicable to the Class:** This class action is also appropriate  
13 for certification because Defendants have acted or refused to act on grounds generally applicable  
14 to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief  
15 with respect to Class as a whole. The policies of Defendants challenged herein apply and affect  
16 members of both Class uniformly, and Plaintiffs' challenge of these policies hinges on Defendants'  
17 conduct, not on facts or law applicable only to Plaintiffs.

18                     **Count I: Declaratory Relief Under TILA and Regulation Z**

19       33.     Plaintiffs incorporate the above allegations by reference.

20       34.     The Truth-in-Lending Act ("TILA") and its implementing regulation (Regulation  
21 Z) prohibit Defendants from changing any of the terms of a mortgage or HELOC, including the  
22 credit limit. 15 U.S.C. § 1647(c)(1); 12 C.F.R. § 226.5b(f)(3).

23       35.     There is an exception under TILA and Regulation Z for any period in which the  
24 creditor reasonably believes that the consumer will be unable to make payments as agreed because  
25 of a material change in the consumer's financial circumstances. This exception requires both a  
26 material change in a borrower's financial situation and the creditor's reasonable belief that the  
27 borrower will not be able to repay the HELOC account as agreed. 15 U.S.C. § 1647; 12 C.F.R. §  
28

1 226.5(b)(3)(vi), comment 7. Regulation Z permits an association to suspend or reduce a HELOC  
2 account only when the designated circumstances exist, and the regulatory commentary emphasizes  
3 that credit privileges must be timely reinstated when those circumstances cease.

4 36. Before reducing the limits of their customers' HELOCs, Defendants had the  
5 obligation to both ensure that the customers' financial circumstances had in fact materially  
6 changed and that if those circumstances had materially changed, that they would reasonably render  
7 the customer unable to meet the terms of the agreement. The Defendants' practice of asking for  
8 financial documentation within a certain number of days, and then suspending the line prior to the  
9 expiration of those deadlines, and then claiming they have not been provided the necessary  
10 information, violates these duties. Additionally, Defendants reduced the credit limits and/or froze  
11 the HELOC accounts of the Class members, including Plaintiffs, whose financial circumstances  
12 had not materially worsened and/or where Defendants lacked a reasonable basis for concluding  
13 that the accountholders would be unable to meet the terms of their loans.

14 37. Plaintiffs and the Class members have been harmed by being denied credit at a  
15 necessary time and incurred damages, such as returned/dishonored check fees and finance charges,  
16 due to the Defendants' unfair notice scheme.

17 38. Plaintiffs and the other members of the Class have additionally been harmed  
18 because Defendants have knowingly failed to disclose information that would permit Plaintiff and  
19 the Class members to fairly determine whether to seek reinstatement, including but not limited to:

- 20 a. how Defendants determine or define a material change in income or financial  
21 circumstances,
- 22 b. how Defendants compute an accountholder's ability to meet the terms of his or her  
23 loan agreement,
- 24 c. Defendants' actual and specific reasons for the reduction or suspension of the  
25 HELOCs,
- 26 d. the process, procedures, and guidelines pursuant to which Defendants implemented  
27 their reduction /suspension of the HELOCs,
- 28

1 e. other necessary and material information.

2 39. The Class and Defendants have adverse legal interests, and there is a substantial  
3 controversy between the Class and Defendants of sufficient immediacy and reality to warrant the  
4 issuance of a declaratory judgment as to whether Defendants' mass reduction of credit limits  
5 violates TILA and Regulation Z.

6 40. The Schulkens, on their own behalf and behalf of the other Class members, seek a  
7 declaratory judgment under 27 U.S.C. § 2201 that Defendants' mass reduction or suspension of  
8 HELOC credit limits in connection with their letters violates TILA and Regulation Z.

9 **Count II: Violation of TILA and Regulation Z**

10 41. Plaintiffs incorporate the above allegations by reference.

11 42. Defendants knowingly lacked a sufficient factual basis for reducing Plaintiffs' and  
12 the Class's credit limits or prohibiting additional extensions of credit. Defendants lacked a sound  
13 factual basis for concluding the financial circumstances had materially changed for the Schulkens  
14 and other Class members sufficiently to support reducing the credit limits or prohibiting additional  
15 extensions of credit. Defendants also used improper triggering events for determining when such  
16 a "material change" had occurred.

17 43. Defendants' suspension of the HELOC for the Schulkens and other Class members'  
18 HELOCs violated the Truth-in-Lending Act and Regulation Z.

19 44. Defendants' violations of the Truth-in-Lending Act and Regulation Z damaged the  
20 Schulkens and the other Class members. These damages occurred in the form of the increased  
21 price of credit, loss of the bargained-for use of the credit line, adverse effects on credit scores,  
22 dishonored check and finance charges, and other damages.

23 45. The Schulkens, on their own behalf and behalf of the other Class members, seek  
24 actual damages under 15 U.S.C. § 1640(a)(1), statutory damages under 15 U.S.C. § 1640(a)(2)  
25 (B), and costs of the action, together with a reasonable attorney's fees under 15 U.S.C. §  
26 1640(a)(3).

### **Count III: Violation of TILA and Regulation Z**

46. Plaintiffs incorporate the above allegations by reference.

47. Where a creditor prohibits additional extensions of credit or reduces the credit limit, “the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action.” Regulation Z, 12 C.F.R. § 226.9(c)(3).

48. Defendants provided Plaintiffs and, on information and belief, the members of the Class with notices of their HELOC reductions and suspensions that lacked sufficient and necessary information, including the specific reasons for Defendants’ actions.

49. Defendants’ notices failed to adequately identify the specific reasons for their actions. The HELOC suspension notices sent by Defendants to Plaintiffs and the Class are further deficient because they do not indicate what change in financial circumstances Defendants consider “material” and do not include what adverse information Defendants obtained from credit agencies that purportedly justified account suspension or reduction. Without this information, Plaintiffs and other Class members were deprived of critical information needed to determine whether to challenge Defendants’ actions and seek account reinstatement.

50. Defendants’ violations of the Truth-in-Lending Act and Regulation Z damaged the Schulzens and the other Class members. These damages occurred in the form of the increased price of credit, adverse effects on credit scores, loss of the bargained-for use of the credit line, dishonored check and finance charges, and other damages.

51. The Schulzens, on their own behalf and behalf of the other Class members, seek actual damages under 15 U.S.C. § 1640(a)(1), statutory damages under 15 U.S.C. § 1640(a)(2) (B), and costs of the action, together with a reasonable attorney’s fee under 15 U.S.C. § 1640(a)(3).

### **Count IV: Breach of Contract**

52. Plaintiffs incorporate the above allegations by reference.

53. The Schulzens and the other Class members obtained HELOCs from Defendants. The terms of these HELOCs constitute a contract between the Class members and Defendants.

1           54.     The HELOC agreements contain a term that tracks Regulation Z and provides that  
2 Defendants may reduce or suspend additional extensions of credit during times when the  
3 Defendants “(b) ...reasonably believe that you will be unable to fulfill your payment obligations  
4 under this Agreement due to a material adverse change in your financial circumstances.”

5           55.     The Schulzens and the other Class members made all payments due to Defendants  
6 and otherwise fully performed under their HELOCs with Defendants.

7           56.     The availability of credit and the triggering events the lender could use to suspend  
8 credit extensions were material terms.

9           57.     Defendants materially breached the terms of the HELOCs by suspending the  
10 HELOC accounts for the Schulzens and other Class members’ HELOCs where no material  
11 adverse change in financial circumstances had first occurred that would give Defendants a  
12 reasonable basis for believing the borrowers would be unable to fulfill their payment obligations  
13 under their agreements.

14          58.     As a result, the Schulzens and the other Class members have suffered damages in  
15 the form of the increased price of credit, lost interest, attorneys' fees, adverse effects on credit  
16 scores, finance charges and dishonored check fees, the loss of the bargained-for use of the credit  
17 limit, and other damages.

18          59.     The Schulzens, on their own behalf and behalf of the other Class members, seek  
19 damages for Defendants’ breach of contract, as well as interest and attorney’s fees and costs  
20 pursuant to Cal. Code Civ. Proc. § 1021.5.

21                   **Count V: Violation of California’s UCL, Cal. Bus. & Prof. Code § 17200**

22          60.     Plaintiffs incorporate the above allegations by reference.

23          61.     Defendants’ reduction or suspension of the credit limit for the Schulzens and other  
24 Class members’ HELOCs violated TILA and Regulation Z. With respect to the Class,  
25 Defendants’ practice of requesting financial information by a deadline, and then proceeding to  
26 suspend accounts based on purported failures to submit the requested information well before the  
27 deadline was unlawful, unfair, and deceptive. These unlawful, deceptive, and unfair acts and  
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1 practices constitute unfair competition in violation of the UCL.

2 62. Defendants have engaged in unlawful, unfair, and fraudulent business acts and  
3 practices as set forth above.

4 63. Defendants have violated the “unlawful” prong of the UCL in that Defendants’  
5 conduct was undertaken in violation of TILA and Regulation Z, as alleged above.

6 64. Defendants have also violated the “unfair” prong of the UCL by suspending or  
7 reducing the HELOC accounts without providing any advance notice (in its notice letters or in its  
8 HELOC agreements) that failure to timely provide the requested financial information could  
9 constitute grounds for account suspension. Defendants further acted unfairly and deceptively by  
10 requiring that certain financial information be submitted within 14 days but then suspending  
11 Plaintiffs’ HELOC in only 5 days. Mandating an arbitrary deadline without identifying the  
12 potential ramifications for noncompliance, and then suspending accounts prior to the expiration of  
13 that deadline, is an unfair, deceptive and unscrupulous action.

14 65. Additionally, Defendants’ actions caused substantial injury to Plaintiffs and the  
15 Class members. The injury caused by Defendants’ conduct is not outweighed by any  
16 countervailing benefits to consumers or competition; Defendants’ actions benefitted only  
17 Defendants while causing nothing but injury to the Class members by wrongfully depriving them  
18 of access to affordable credit at a critical time. The injury caused by Defendants’ conduct could  
19 not reasonably have been avoided by the Class members themselves, as Defendants exercised their  
20 discretion unilaterally to suspend or reduce the HELOC accounts.

21 66. Defendants have also violated the “fraudulent” prong of the UCL in that  
22 Defendants’ statements or material omissions to their HELOC customers whose lines Chase  
23 and/or WaMu suspended or reduced, made both in writing through their HELOC notices and  
24 letters and orally over the telephone through their customer service representatives when  
25 aggrieved customers contacted Defendants to discuss the suspensions or reductions, were false and  
26 were likely to deceive a reasonable consumer, including Defendants’ statements:

27 a. regarding the availability of credit through the HELOCs;

- 1           b.       indicating that any potential future reduction of credit through the HELOCs would  
2                   only occur through a material adverse change in financial condition;
- 3           c.       concerning the amount of time that a customer has to respond to Chase's request  
4                   for financial information, including the potential consequences of not fully  
5                   complying with its information request within the stated 14-day period –  
6                   particularly in light of Chase' illustrated willingness to suspend accounts in less  
7                   than half that time; and
- 8           d.       regarding Defendants' purported authority under the customers' HELOC  
9                   agreements to demand the customer submit IRS Form 4506T.

10       67.       Defendants' violations of the UCL damaged Plaintiffs and the Class by causing the  
11 Schulkens and the other Class members to pay money to Defendants in the form of fees, lost  
12 interest, lost opportunity, adversely impacted credit, loss of the bargained-for use of the credit  
13 limit, and other damages.

14       68.       Plaintiffs and the Class members have also suffered adverse effects to their credit  
15 scores, finance charges from dishonored checks, attorneys' fees and other damages.

16       69.       The Schulkens, on their own behalf and behalf of the other Class members, seek an  
17 order preliminarily and permanently enjoining Defendants' unfair competition alleged herein and  
18 requiring Defendants to restore HELOC credit limits and cease suspending or reducing HELOCs  
19 in violation of Regulation Z, and individual restitution of property gained at the expense of the  
20 Class members by such unfair competition under the UCL (Cal. Bus. & Prof. Code § 17203), as  
21 well as interest and attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

22       WHEREFORE, Plaintiffs pray that the Court enter judgment and Orders in their favor and  
23 against Defendants as follows:

- 24       (a)       Certifying the action as a class action and designating Plaintiffs and their counsel as  
25                   representatives of the Class;
- 26       (b)       Entering declaratory judgment under 27 U.S.C. § 2201 on Count I that the  
27                   Defendants' HELOC reductions violate federal law;
- 28



- 1 (c) Awarding statutory damages under 15 U.S.C. § 1640(a)(2)(B) for Counts II and III;
- 2 (d) Awarding actual damages on Counts II, III, IV, and V for the Class including but
- 3 not limited to appraisal fees, loss of the bargained-for use of the credit limit, the
- 4 increased price of credit, dishonored check and finance charges, attorneys' fees,
- 5 interest and other damages in an amount to be proved at trial;
- 6 (e) Awarding preliminary and permanent equitable and injunctive relief for the Class,
- 7 including enjoining the Defendants from further violations of Regulation Z,
- 8 restoration of HELOC credit limits, restitution of property gained by the unfair
- 9 competition alleged herein, and an order for accounting of such property;
- 10 (f) Awarding Plaintiffs and the Class reasonable costs and attorneys' fees;
- 11 (g) Awarding pre- and post-judgment interest;
- 12 (h) Awarding punitive damages; and
- 13 (i) Granting such other and further relief as the Court may deem just and proper.

14 **JURY TRIAL DEMAND**

15 The Plaintiffs hereby demand a trial by jury of all issues so triable.

16 Dated: October 27, 2010

JEFFREY AND JENIFER SCHULKEN,  
individually and on behalf of  
a class of similarly situated individuals

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**PROOF OF SERVICE**

I hereby certify that on October 27, 2010, I electronically filed the foregoing *Plaintiffs' Third Amended Class Action Complaint and Jury Demand* with the Clerk of the Court using the CM/ECF system. Notice of this filing is sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system:

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